



STATE OF MONTANA
DEPARTMENT OF ADMINISTRATION
ARCHITECTURE AND ENGINEERING DIVISION

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STANDARD FORM OF CONTRACT BETWEEN OWNER AND ARCHITECT/ENGINEER
FOR SERVICES UNDER \$20,000

THIS CONTRACT IS SUBJECT TO ARBITRATION PURSUANT TO THE UNIFORM ARBITRATION ACT, MCA TITLE 27 CHAPTER 5

This CONTRACT, between the ARCHITECT/ENGINEER (as stated herein below) and the STATE OF MONTANA, acting by and through its DIRECTOR, DEPARTMENT OF ADMINISTRATION, hereinafter called the OWNER. WITNESSETH, that the Architect/Engineer and the Owner for the consideration hereinafter named agree as follows:

ARTICLE 1. SCOPE OF WORK. The Architect/Engineer's Basic and Additional Services shall consist of all effort necessary to accomplish the Scope of Work described below inclusive of any necessary structural, civil, mechanical and electrical engineering services or other essential services. The Architect/Engineer shall provide the services required to accomplish the Scope of Work as follows (use attachments as necessary):

ARTICLE 2. TIME OF COMPLETION. The Work to be performed shall commence on the date set forth in this Contract and shall be completed within or by:

ARTICLE 3. THE CONTRACT SUM. The Owner shall pay the Architect/Engineer in current funds for the performance of the Work, subject to additions and/or deductions made by future negotiations to be agreed upon in writing, the Contract Sum of:

ARTICLE 4. DOCUMENTS. The Architect/Engineer shall prepare, for review and approval by the Owner, all Documents consisting of reports, studies, drawings, sketches, specifications, estimates of construction cost, and other similar documents necessary to fix and describe the size and character of the entire Project as to the architectural, structural, mechanical, electrical systems and other elements as defined in the Scope of Work for the purposes of bidding and constructing the Project.

ARTICLE 5. CONSTRUCTION.

- a. The Architect/Engineer shall provide administration of the Construction Contract as set forth in this Article inclusive of the General Conditions of the Contract for Construction.
- b. The Architect/Engineer shall be the representative of the Owner throughout the duration of this Contract and as such shall advise and consult with the Owner. The Architect/Engineer shall have authority to act on behalf of the Owner to the extent provided in the General Conditions of the Construction Contract unless otherwise modified in writing.
- c. The Architect/Engineer shall be the interpreter of the requirements of the Plans and Specifications. All interpretations, responses to requests for information, and decisions concerning the Plans and Specifications shall be in writing and issued to the Contractor and Owner by the Architect/Engineer.
- d. The Architect/Engineer shall have authority to reject work that does not conform to the Plans and Specifications. The Architect/Engineer shall advise the Owner of any and all rejected work and, if in his reasonable opinion, it may be necessary to stop work. The Owner will issue any Stop Work Orders to the Contractor.
- e. The Architect/Engineer shall furnish the Owner two (2) sets of final as-built Record Mylar Drawings and a final set of blue-line prints that have incorporated changes made during the construction process which reflect the as-built conditions. The Architect/Engineer shall also furnish the Owner with two (2) full sets of Specifications and Record Drawings in AutoCAD electronic media format on compact discs. One disc shall be solely read-only project plot files and the other disc shall contain a full set of as-built with .dwg extensions. Both discs shall also include and index of the drawings and an index of all layers with full descriptions. All items shall be provided to the Owner not less than thirty (30) calendar days after the date of Final Acceptance. One (1) set of mylar drawings, the blue-line prints, and one compact disc shall be sent to the agency representative identified herein above.

ARTICLE 6. CONTRACT TYPE AND OTHER RESPONSIBILITIES.

- a. This Contract is a Lump-Sum, Fixed-Fee amount for all Services and Responsibilities required to complete the Scope and represents the complete agreement between the parties. If there are professional services required beyond the scope of this Contract, those services will be negotiated. Services beyond the scope of the Contract must be authorized in writing by the Owner before the work is performed. By signature on this Contract, the declaration is made that the Architect/Engineer is professionally qualified, registered, and licensed to practice in the State of Montana.
- b. The Architect/Engineer shall review the Scope of Work and project budget furnished by the Owner and make recommendations for the requirements of the project. The Architect/Engineer shall establish the requirements and all design parameters in agreement with the Owner that shall then be incorporated into the Scope of Work.
- c. The Architect/Engineer shall be responsible for providing the applicable building code jurisdiction, whether the State Building Codes Bureau or a local municipality, with a set of plans and specifications for the Plan Review. The Architect/Engineer shall pay the applicable Plan Review Fee which will be reimbursed by the Owner as a Supplemental Service.
- d. The Architect/Engineer shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications and other services furnished under this Contract. The Architect/Engineer shall, without additional compensation, correct or revise any errors, deficiencies or omissions in the designs, drawings, specifications, estimates and other services.
- e. Neither the Owner's review, approval or acceptance of, nor payment for, the services required under this Contract shall be construed to operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract. The Architect/Engineer shall remain liable to the Owner for any and all damages caused by the Architect/Engineer's negligent performance of any of the services furnished under this Contract.
- f. The rights and remedies of the Owner provided for under this Contract are in addition to any other rights and remedies provided by law.

ARTICLE 7. CONSTRUCTION COST OF THE PROJECT.

- a. Construction Cost does not include the fees of the Architect/Engineer, the cost of the land, rights-of-way, or other costs that are the responsibility of the Owner but shall be the total estimated cost to the Owner of all elements of the Project designed and/or specified by Architect/Engineer. Estimates of Construction Cost prepared by the Architect/Engineer must represent his best judgment based upon the latest published cost data and general conditions of the construction industry in the area where the project is to be constructed and does not constitute a guarantee to the Owner that bids or negotiated prices will not vary. When the fixed limit of Construction Cost is established in conjunction with the Scope of Work, the Architect/Engineer shall determine, with the interaction of the Owner, what materials, equipment, components, systems, and types of construction are to be included in the Plans and Specifications, and to make reasonable adjustments in the Scope of Work to bring it within the fixed limit. The Architect/Engineer may also include up to four (4) Additive Alternates, with the interaction of the Owner, to the Base Bid to ensure the bids will be within the fixed limit of Construction Cost.
- b. If the final Estimate of Construction Cost exceeds the fixed limit of Construction Cost (including any Alternates and bidding contingencies), the Owner may: 1) Give written approval of an increase in the fixed limit of Construction Cost; or, 2) Confer with the Architect/Engineer in revising the Project to reduce the final Estimate of Construction Cost. Such revisions shall be at the expense of the Architect/Engineer.
- c. If the lowest responsible bid exceeds the fixed limit of Construction Cost (including any Alternates and bidding contingencies), the Owner may: 1) Give written approval of an increase in the fixed limit of Construction Cost; or, 2) Negotiate deductive changes, not to exceed 7% of the total cost of the project with the lowest responsible bidder; or, 3) Confer with the Architect/Engineer in revising the Project to reduce the final Estimate of Construction Cost and rebid the Project. Such revisions shall be at the expense of the Architect/Engineer and shall constitute his sole responsibility to the Owner in this regard.

ARTICLE 8. RELATIONSHIP, SUCCESSORS AND ASSIGNS, TERMINATION OF THE CONTRACT, OWNERSHIP OF DOCUMENTS.

- a. The relationship of Architect/Engineer to Owner under this Contract is that of an Independent Contractor. The Architect/Engineer is not an employee of the State of Montana, is not carrying out the regular business of the State and is not subject to the supervision and control of the State. Each of the parties will be solely and entirely responsible for their own acts and the acts of their employees. No benefits are provided by the State of Montana to the Architect/Engineer or the Architect/Engineer's employees.
- b. The Owner and the Architect/Engineer, each binds himself, his partners, successors, legal representatives, and assigns to the other party to this Contract, and to the partners, successors, legal representatives and assigns of such other party in respect to all covenants of this Contract. Neither the Owner nor the Architect/Engineer shall assign or transfer his interest in the Contract without written consent of the other.
- c. The Architect/Engineer or Owner may terminate this Contract upon giving written notice to the other that such party has failed to fulfill its obligations under this Contract. In the event of such default, the Architect/Engineer or Owner shall notify the other and allow ten (10) calendar days upon receipt for corrective action. Should no satisfactory corrective action be taken by the defaulting party, the other shall have right to terminate the Contract. The Owner may terminate this Contract without cause at any time upon giving written notice to the Architect/Engineer. If the Contract is terminated for the convenience of the Owner, the Architect/Engineer shall be paid for all services rendered prior to receiving the written notice. If the Architect/Engineer fails to fulfill his obligations and the Contract is terminated, the Owner may prosecute the Project to completion by contract or other means available. The Owner may hold the Architect/Engineer liable for any and all additional costs incurred due to the Architect's/Engineer's failure to perform. The rights and remedies available to the Owner provided herein are in addition to any and all other rights and remedies provided by law or equity.
- d. All documents developed under this Contract are and shall become the property of the Owner whether the Project for which they are made is or is not executed. The signing of this Contract shall constitute a complete transfer of ownership, intellectual property and copyright of all documents from the Architect/Engineer to the Owner upon Substantial Completion of the Project. Such transfer shall not be construed by the Architect/Engineer as a grant for usage nor can it be revoked by the Architect/Engineer. The Owner agrees to indemnify and hold harmless the Architect/Engineer from any and all claims, demands and causes of action of any kind or character arising as a result of reuse of the documents developed under this Contract.

ARTICLE 9. RECORDS, CONTINGENT FEES, EXTENT OF CONTRACT, VENUE, INDEMNIFICATION, EMPLOYMENT.

- a. The State shall have access to all records, correspondence, and files of the Architect/Engineer, its employees, engineers, or consultants pertaining to the contract administration undertaken on behalf of the State. This access shall be continuing and survive the termination of the Contract for either cause or convenience. Such records shall be kept in a generally recognized format and shall be available to the Owner, Legislative Auditor, the Legislative Fiscal Analyst or his authorized representative at mutually convenient time for a period of three (3) years after completion and acceptance of the Project by the Owner.
- b. The Architect/Engineer warrants that he has not employed or retained any person, partnership, or corporation, other than a bona fide employee or agent working for the Architect/Engineer to solicit or secure this Contract, and that he has not paid or agreed to pay any person, partnership, or corporation, other than a bona fide employee or agent, any fee, or any other consideration, contingent upon the making of this Contract.
- c. This Contract represents the entire and integrated agreement between the Owner and the Architect/Engineer and supersedes all prior negotiations, representations or agreements, whether written or oral. This Contract may be amended only by written instrument signed by both Owner and Architect/Engineer.
- d. In the event of mediation, arbitration, or litigation concerning the Contract, venue shall be the First Judicial District in and for the County of Lewis and Clark, Montana, and the Contract shall be interpreted according to the Laws of Montana.
- e. The Architect/Engineer shall indemnify and hold harmless the State of Montana from and against all damages, claims and liability arising out of the negligent acts, errors, or omissions of the Architect/Engineer, its officers, agents, consultants, and employees, including all judgments, awards, losses, expenses, costs and attorneys' fees. The Owner shall indemnify and hold harmless the Architect/Engineer from and against all damages, claims and liability arising out of the negligent acts, errors, or omissions of the Owner, its officers, agents, consultants, and employees, including all judgments, awards, losses, expenses, costs and attorneys' fees.
- f. The Architect/Engineer shall be familiar with and be responsible for and adhere to all Federal and State requirements regarding employment practices. All hiring and other employment practices of the Architect/Engineer shall be in accordance with Federal Equal Employment Opportunity Commission regulations and shall be nondiscriminatory, based on merit and qualifications without regard to race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin.

ARTICLE 10. DISPUTE RESOLUTION.

Any and all controversies, disputes, claims or other matters between the parties arising out of or related to this Contract, or breach thereof, shall be decided and settled by arbitration in accordance with the Uniform Arbitration Act, Title 27, Chapter 5 of Montana Code Annotated. Each party shall be responsible for and bear its own costs of any arbitration, except those awarded by arbitration. Good faith effort and attempt shall be made by both parties to decide and settle any and all controversies, disputes, claims or other matters prior to initiating arbitration proceedings either through negotiation or mediation. Mediation shall be conducted by a neutral third party in accordance with rules agreed to in writing by the parties. The complaining party shall, at a minimum, provide notice of any claim, dispute or potential for legal proceedings pursuant to the applicable statute(s) of limitations as provided in Montana law. However, a complaining party may demand initiation of a resolution through arbitration upon 15 calendar days' written notice to the other party of the conditions that give rise to the complaint or dispute. Lewis & Clark County, State of Montana shall be the venue for all arbitration proceedings. Montana law shall govern any arbitration. All arbiters shall be certified by the American Arbitration Association. When written demand for arbitration has been made, the manner of arbitration with regard to the selection and number of arbiters shall be mutually agreed upon in

writing by both parties. If the parties cannot agree, petition shall be made to the First Judicial District Court of Lewis & Clark County for selection of arbiter(s). During arbitration and resolution of any dispute, complaint or claim, the Architect/Engineer shall continue with scheduled performance of work in accordance with this Contract. The Owner shall continue to make payment in accordance with the provisions of this Contract except in those areas involving the complaint, dispute or claim.

This Contract entered into as of the day and year written:

ARCHITECT/ENGINEER:

(Company)

(Address)

(City, State, Zip)

(Signature)

(Date)

Incorporated? _____

OWNER: STATE OF MONTANA

DEPARTMENT OF ADMINISTRATION
ARCHITECTURE & ENGINEERING DIVISION
1520 East Sixth Avenue, P.O. Box 200103
Helena, Montana 59620-0103

Director/Administrator/Project Manager

Date